DATO' SERI ANWAR IBRAHIM

v.

PERDANA MENTERI, MALAYSIA & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
MOHD SAARI YUSOF J
[ORIGINATING SUMMONS NO: S5-21-185 OF 1998]
24 DECEMBER 1998

CONSTITUTIONAL LAW: *Executive - Dismissal of Minister - Procedure to be followed - Conveyance of decision to dismiss - Whether must be by Yang di-Pertuan Agong or some particular person - Letter revoking appointment signed by Prime Minister - Whether this was wrong - Whether sufficient that Yang di-Pertuan Agong was advised and informed of decision to revoke appointment - Whether dismissal was unconstitutional - Whether decision to revoke appointment of Minister justiciable - Federal Constitution, art. 43(5)*

CIVIL PROCEDURE: *Striking out - Pleadings - When court can entertain such application - Rules of the High Court 1980, O. 18 r. 19*

The defendants, pursuant to O.18 r. 19(1)(a), (b) and (d) of the Rules of the High Court 1980 ('the RHC'), applied to strike out the plaintiff's originating summons and supporting affidavits therefor. The plaintiff – the former Deputy Prime Minister and Finance Minister – instituted a claim contending that his dismissal from office was unconstitutional. It was in evidence that the plaintiff received a letter signed by the Prime Minister informing him of his dismissal and based on this, it was argued that it appeared as if it was the Prime Minister who dismissed him. Thus, the plaintiff's claim was grounded on the premise that the revocation of his appointment was not in accordance with article 43(5) of the Federal Constitution ('the Constitution') which provides, *inter alia,* that the revocation of appointment of any Minister shall be by the Yang di-Pertuan Agong. The defendants, meanwhile, contended that the King must act on advice and as the affidavit of the King's private secretary evidenced the fact that the King was advised and informed of the decision to revoke the appointment of the plaintiff, art. 43(5) of the Constitution was complied with. Based on this, the defendants contended that the plaintiff's case was unsustainable.

Held:

[1] By art. 43(5) of the Constitution, a Minister holds office during the pleasure of the Yang di-Pertuan Agong, meaning that a Minister may be dismissed at any time on the advice of the Prime Minister.

[2] As the King can only act on advice, the Prime Minister must first formulate a decision to dismiss the plaintiff. The next step is for the Prime Minister to inform the King about his decision. Thereafter the decision is to be conveyed to the plaintiff.

[2a] Normally, the King would not personally inform a Minister about the revocation of his appointment. Instead, the King would instruct his servant or agent to do so.

[2b] Here, the Prime Minister informed the plaintiff about the revocation. As there is no requirement for any particular person to sign the letter of revocation, there is no reason why the Prime Minister could not sign the letter to convey the decision to the plaintiff.

[3] There is nothing in the letter which indicates that it was written at the behest of the King. Nevertheless, as the King was advised and informed about the decision, such omission is of no consequence. Thus, the letter of revocation satisfied the requirement of art. 43(5) of the Constitution in substance although not in form.

[4] Where facts and law are not clear, it would be highly improper for a court to entertain an application under O. 18 r. 19 of the RHC. Here, however, the hearing proceeded on undisputed facts and the parties had argued extensively on the substantive issue of whether there was compliance with art. 43(5) of the Constitution.

Per curiam:

[1] In the absence of expressed provision to the contrary, the decision to revoke the appointment of a Minister under art. 43(5) of the Constitution is not justiciable.

[Judgment entered for defendants.]

Cases referred to:
AG of Duchy of Lancaster v. L & NW Railway Co [1892] 3 Ch 274 ***(cit)***
Mahan Singh v. Government of Malaysia [1975] 2 MLJ 155 ***(refd)***
Merdeka University Bhd v. Government of Malaysia [1982] 2 MLJ 243 ***(cit)***
Samsher Singh v. State of Punjab [1974] 2192 AIR SC ***(refd)***

Legislation referred to:
Federal Constitution arts., 40(1A), 43(5)
Rules of the High Court 1980, O. 18 r. 19(1)(a), (b), (d)
Indian Constitution [India], art. 74

For the plaintiff - Karpal Singh (Jagdeep Singh Deo & Gobind Singh Deo with him); M/s Karpal Singh & Co
For the defendants - Dato' Zaitun Zawiyah Puteh (Bakar Jais with her)

Reported by S Dharmendran

JUDGMENT

Mohd Saari Yusof J:

By way of summons in chamber (encl. 11), the defendants/applicants apply for the following:

1) Bahawa saman pemula dan affidavit sokongan plaintif terhadap defendan-defendan dibuang di bawah A. 18 k. 19(1)(a), (b) dan (d) Kaedah-Kaedah Mahkamah Tinggi 1980 dan/atau di bawah bidang kuasa sedia ada Mahkamah atas sebab:

   (a) ia tidak mendedahkan apa-apa kausa tindakan yang munasabah; dan/atau

   (b) ia adalah mengaibkan, remeh atau menyusahkan; dan/atau

   (c) ia selainnya adalah suatu penyalahan proses Mahkamah.

2) (not applicable).

3) (not applicable).

4) Bahawa tindakan plaintif terhadap defendan-defendan dibatalkan;

5) Bahawa defendan-defendan mendapat kos permohonan ini.

Background

At all material times, the plaintiff was Deputy PM and also a Minister of Finance. On 2 September 1998, plaintiff was served with a letter from PM saying that his appointment as Deputy PM and Minister of Finance was revoked with immediate effect (2 September at 5.30pm).

Observation

Language of art. 43(5) is clear. A Minister holds office during the pleasure of Yang Dipertuan Agong, meaning a Minister may be dismissed at any time on advice of Prime Minister. What is the rationale for the right to dismiss at pleasure? In *Mahan Singh v. Government of Malaysia* [1975] 2 MLJ 155 at p. 160 Suffian LP (as he then was) said:

> as stated by Sproule J in *Pillai's* case government employment being for the good of the public, it must not continue when it is no longer for the public good; it is essential for the public good that the Crown should not be hampered in dismissing a servant whose continuance in office it deems detrimental to the best interests of the State and its good government, ...

Further it is my observation, in the absence of expressed provision to the contrary, decision to revoke the appointment of a Minister under art. 43(5) is not justiciable.

The above is not in issue.

Issue for determination is whether revocation of appointment of plaintiff as Deputy Prime Minister and Minister of Finance was done in accordance with the requirement of art. 43(5) Federal Constitution.

Dato' Zaitun submitted that by virtue of art. 43(5) and art. 40 (1A), the King must act on advice (see *Merdeka University Bhd v. Government of Malaysia* [1982] 2 MLJ 243).

On construction to be given to art. 74 Indian Constitution (similar to art. 40 Federal Constitution), my attention was drawn to the case of *Samsher Singh v. State of Punjab* [1974] 2192 AIR SC at p. 2228 para 148 where it states *inter alia*:

> We are of the view that President means for all practical purposes, the Minister or the Council of Ministers as the case may be, and his opinion, satisfaction or decision is constitutionally secured when his Ministers arrive at such opinion, satisfaction or decision.

To recapitulate, on the principle enunciated above, the King must act on advice. A *fortiori*, based on clear wording of art. 40 (1A), it is imperative that the king only acts on advice of PM.

Further, it is submitted that with the conveying of Prime Minister's decision (keputusan) to the King coupled with the letter of revocation sent to plaintiff, the act of revocation was complete. Hence, the procedure adopted met the requirement of art. 43(5).

En. Karpal concedes that art. 40(1A) applies to plaintiff's case, meaning the King must act on advice of PM.

However, he argues that what is in dispute is about PM's letter sent to plaintiff. From the tone of the letter, it appears as if PM was dismissing the plaintiff, whereas PM was not the alter ego of the King.

Finding

Common prudence dictates that as the King could only act on advice, PM must first formulate a decision (keputusan) to dismiss plaintiff. Next step is for PM to inform the King about his decision (keputusan). Thereafter, decision to be conveyed to the plaintiff. The question is who is responsible in informing the plaintiff about the revocation.

Normally, the King would not personally inform a Minister about the revocation of a Minister's appointment but would instruct his servant or agent to do so. Such person includes the King's private secretary.

For ease of reference, I append PM's letter below:

PERDANA MENTERI
MALAYSIA

Yang Berhormat Dato Seri Anwar bin Ibrahim

Yang Berhormat Dato,

Dengan dukacitanya saya terpaksa melucutkan jawatan-jawatan Timbalan Perdana Menteri dan Menteri Kewangan daripada Dato' Seri serta lain-lain jawatan dalam Kerajaan yang dipegang oleh Dato' Seri sebagai Timbalan Perdana Menteri dan Menteri Kewangan.

Pelucutan ini berkuatkuasa dari hari ini, 2 September 1998 mulai jam 5.30 petang.

Perlucutan ini telah dimaklumkan kepada Seri Paduka Baginda Yang Di-Pertuan Agong.

Salam hormat,

t.t.
Dr Mahathir bin Mohamad

2 September 1998

Here, PM informed the plaintiff about the revocation. As there is no prescribed format for instance requiring any particular person to sign the letter of revocation, I do not see why PM himself could not sign the letter to convey the decision (keputusan) to plaintiff.

It is true that there is nothing in PM's letter to show that the letter was written at the behest of the King. Nevertheless as the King was advised and informed about the decision (keputusan) as evidenced by para. 4 and 5 of the affidavit (encl. 10) of the private secretary, such omission, in my view, is of no consequence. A *fortiori*, the aforesaid affidavit evidence lend support to the

averment in PM's letter in that he (PM) had informed the King about the revocation. Looking at undisputed facts objectively, in substance although not in form, in my judgment, the letter of revocation, has satisfied the requirement of art. 43(5).

Where facts and law are not clear, which would required further investigation, it would be highly improper for the court to entertain application under O. 18 r. 19 RHC 1980. However, as here, the hearing proceeded on undisputed facts and the parties had argued extensively on substantive issue ie, whether there is compliance with art. 43(5). Plaintiff's case revolves on PM's letter sent to plaintiff. I have made a finding as to its legal effect, hence there is no necessity for parties to argue further on substantive issue. On the facts and law as adumbrated above, it is glaring to me that plaintiff's case discloses no reasonable cause of action and is obviously unsustainable (*A.C. of Duchy of Lancaster v. L. & NW Railway Co.* [1892] 3 Ch. 274).

In the premise and for the above reasons, I enter judgment for the defendants and order in terms of prayer 1, 4 and 5 of encl. 11.